



Patent

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Customer No. 24,118

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

APPLICANT: LAURENCE H. LANGHOLZ)
and ROBERT C. BROTHERS)
Serial No.: 09/812,121)
Filed: MARCH 16, 2001)
For: SELF-GUYING)
COMMUNICATION TOWER)
Art Unit: 3637)
Examiner: TRAN, A. PHI DIEU N.)

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APPELLANTS' APPEAL BRIEF

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Dear Sir:

Applicants, Laurence H. Langholz and Robert C. Brothers, file this brief pursuant to 37 CFR
§1.192 in support of their appeal to the Board of Patent Appeals and Interferences.

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indicated above and is addressed to the Commissioner of
Patents and Trademarks, Washington D.C. 20231 by

Laurence H. Langholz

REAL PARTY IN INTEREST

The real parties in interest are the applicants herein and their assignee, AllTech Communications, LLC.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF THE CLAIMS

Claims 1, 3, 4 and 6 through 10 are pending in the present application and each claim, as amended, is appealed herein.

Claim 1 is an independent claim relating to a mobile communication tower apparatus of the present invention with Claims 7 and 8 dependent thereon.

Claim 3 is an independent claim relating to a process or method for stabilizing a mobile communications tower.

Claim 4 is an independent claim relating to a mobile lighting tower apparatus with Claims 5, 9 and 10 dependent thereon.

Claim 6 is an independent claim relating to a method or process for stabilizing a mobile lighting tower.

STATUS OF AMENDMENTS

In response to an initial Office Action dated June 20, 2003 rejecting the initial claims as unpatentable over Miller (U.S. Patent No. 4,899,500) in view of McGinnis et al. (U.S. Patent No.

5,025,606), Applicants amended Claims 1, 3, 4 and 6 and canceled Claims 2 and 5. Thereafter, a further Office Action was issued by the Examiner on January 22, 2003 rejecting the claims as obvious under Wilson (U.S. Patent No. 2,922,501) in view of Miller et al. (U.S. Patent No. 4,899,500). Applicants filed a further amendment on April 17, 2003 amending Claims 1, 3, 4 and 6. Thereafter, the Examiner issued a final rejection dated July 11, 2003. Applicant filed an amendment on October 6, 2003 adding dependent Claims 7 through 10. The Examiner issued a further Office Action dated October 17, 2003 rejecting Claims 1, 3, 4 and 6-10 wherein he withdrew his prior rejection of the claims based on Wilson (U.S. Patent No. 2,922,501) in view of Miller et al. (U.S. Patent No. 4,899,500) and Ferguson (U.S. Patent No. 5,244,346) and removed the finality of the rejection. The Examiner issued a new rejection under 35 U.S.C. §103(a) as unpatentable over Wilson in view of Miller et al. and Schillinger et al. (U.S. Patent No. 5,961,145) to which Applicants filed an amendment on February 17, 2004. A final rejection Office Action was issued on May 24, 2004. There are no unentered amendments. The present appeal is taken from the May 24, 2004 Office Action.

SUMMARY OF THE INVENTION

The present invention is a trailer mounted mobile communications or lighting tower which is capable of being erected and guyed to itself without use of standard terrestrial anchors.

The tower itself is a telescopically extending tower on a trailer having a chassis mounted on wheels and a hitch. When the trailer is put into place, the trailer is leveled with a plurality of leveling mechanisms. The outriggers are deployed from a retracted to an extended position. The tower is pivotally moved from a horizontal to a vertical position then elevated to its normal operating height where guy wires are secured from tower guy wire lugs down to the chassis guy wire or outrigger guy wire attaching points.

ISSUES

Are Claims 1, 4 and 7 through 10 unpatentable under 35 U.S.C. §103(a) as obvious over Wilson in view of Miller et al. and Schillinger et al.?

Are Claims 3 and 6 unpatentable under 35 U.S.C. §103(a) as obvious over Wilson in view of Schillinger et al.?

GROUPING OF CLAIMS

Claim 1 defines the invention as an apparatus and is an independent claim. Claims 7 and 8 are each dependent on Claim 1 and do not stand or fall with Claim 1.

Claim 3 defines the invention as a process or method to stabilize a mobile communications tower and is an independent claim.

Claim 4 defines the invention as a mobile, lighting tower apparatus with Claims 5,9 and 10 dependent thereon.

Claim 6 is an independent claim defining the invention as a process or method to stabilize a lighting tower and is an independent claim.

ARGUMENT

Claims 1, 4 and 7 through 10 Are Not Obvious Under 35 U.S.C. §103 As Unpatentable Over Wilson in view of Miller et al. and Schillinger et al.

While Wilson shows a mobile tower mounted on a trailer having a chassis, it is otherwise dissimilar. In particular, Wilson does not disclose or show a plurality of pivotally mounted outriggers on a chassis. In Wilson, the outriggers are not a part of the chassis at all. Instead, the outriggers are a part of the sub-structure 1 of the rig which is separate and apart from the trailer and

its mast tower. This is consistent throughout the Wilson reference. For example, the title of the invention is “Portable Rig Mast and Substructure” (underlining added) confirming that the rig mast and the substructure are two separate, independent items. Moreover, for example, in column 1, lines 17-20, Wilson states that “the rig proper is mounted on a vehicle for transportation over the highways, and wherein the sub-structure therefor is so designed as to provide a ramp upon which the rig may be rolled so as to enable the rig to be elevated above the level of the ground. . .”.

Additionally, the Wilson guy wires 54, 56, 60 and 62 are guyed and attached to a separate fixed structure, in this case the substructure of the rig. This is to be contrasted to the present invention where each of the guy wires has a lower end attached to one of the chassis guy wire attaching points. In other words, the present invention guys to itself or as stated in the title “self-guying”.

The Examiner ignores the limitations of Claims 1 and 4, lines 2 and 3 wherein the trailer includes a plurality of chassis guy wire attaching points.

The Examiner appears to comprehend this where he states on Page 2 of the most recent Office Action that “Wilson does not show a plurality of outriggers pivotally mounted to the chassis...”

The Examiner also comprehends and understands that Wilson does not show outriggers which swing radially about an axis parallel to the tower as set forth in Claims 8 and 10. The Examiner also understands and acknowledges that Wilson does not show the foot being vertically adjustable as set forth in Claims 1 and 4.

While it is acknowledged that Miller does show a foot vertically adjustable, it is otherwise dissimilar.

The Miller device is a permanent fixture brought to a location on a truck, off-loaded with a crane, and set up on a concrete foundation. The tower in Miller includes an edifice or building 1 fabrication from fiberglass and green forest concrete (see Miller, column 3, lines 46-62). Miller requires a series of attached I-beams, which are not pivotally mounted to a chassis, which is mounted on one or more wheels with a hitch (column 1 and column 4, line 2). Accordingly, while Miller alleges to be a mobile unit, it is distinct in structure and application. For example, in column 9, lines 66 to column 10, line 2, Miller sets forth that a “tower crew uses a portable crane to lift the fiberglass and reinforced-concrete edifice, and the attached foundation, from the truck on which it is delivered. In this step, a hoisting crane is attached to the foundation at eyelets 92. The edifice is lifted from the truck and positioned for placement on the support surface 3.” Even assuming that the Examiner were to analogize the trailer to the edifice building of Miller, Miller does not attach the guy wires to the trailer as clearly set forth in the present invention. Instead, Miller attaches to I-beams that are part of the foundation.

At first the present invention may appear similar to Miller et al. (U.S. Patent No. 4,899,500), however upon a closer inspection, the present invention is very different. While Miller et al. purports to be a mobile site, the unit disclosed in Miller et al. weighs 54,000 pounds and requires a crane for it to be placed in position. The crane is also required to erect the tower. The present invention can be deployed and put into place by using a pickup truck. The tower itself is erected by using the lifting mechanism built onto the trailer. The device disclosed in Miller et al. is constructed using two 4" thick slabs of concrete. It also has a small building mounted on the foundation. The present invention does not have any concrete in its construction. It also does not contain any buildings.

It should also be noted that the present invention can be deployed and set up within thirty minutes whereas it takes at least 36 hours to erect the system disclosed in Miller et al.

Another difference between Miller et al. and the present invention is that the invention disclosed in Miller et al. relies upon its 54,000 pounds of weight to act as an anchor to provide stability for the tower whereas the present invention weighs approximately 8,300 pounds although this weight can vary with the equipment and accessories added to the present invention.

Miller et al. teaches away from using a trailer to transport the tower and implies that the large weight is necessary to provide a stable platform. This is a direct contradiction to the present invention which is trailer mounted and weighs significantly less than the device disclosed in Miller et al.

The Examiner attempts to overcome the shortcomings of Wilson and Miller et al. by citing a third reference, Schillinger et al. (Figures 2A - 3E) to show outriggers 30 and 32. Schillinger, however, merely shows a vehicle mounted crane and does not show a self-guying communication or lighting tower at all. Accordingly, Schillinger et al. is not analogous art to the art of mobile communication or lighting towers which are self-guying. In particular, Schillinger et al. does not show a tower but shows a vehicle mounted crane. Moreover, Schillinger et al. does not show a plurality of guy wires with the upper ends attached to the tower and lower end attached to the chassis guy wire attaching points.

In summary, Wilson, Miller et al. and Schillinger et al., taken together do not disclose or even suggest all of the claim limitations of the present invention as set forth in Claims 1, 4 and 7 through 10.

Schillinger et al. is Non-Analogous Art

Schillinger et al. is directed to a field of endeavor of vehicle mounted cranes and not to a self-guying communication or lighting tower at all. Accordingly, Schillinger et al. is not analogous art to the art of mobile communication or lighting towers which are self-guying. In order to determine whether an invention is obvious, the scope and content of the prior art must be determined. Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). As set forth in In re Clay, 23 USPQ2d, 1058, 1060:

Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. In re Deminski, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979).

In the present case, it is respectfully submitted that Schillinger et al. is directed to the field of vehicle mounted cranes and has nothing to do with telescoping pivotally mounted communications or lighting towers which include guy lines.

The problem addressed in the present invention not only includes the outriggers which are pivotally mounted to the chassis to provide support and stabilization but also to the problem of connecting a plurality of guy wires to the attaching points on the outriggers. Since cranes, and in particular, the crane in Schillinger et al. does not include any guy wires, this problem is not even addressed.

The Combination of Wilson, Miller et al. and Schillinger et al. Is Improper

It is improper to combine three disparate references to achieve the invention under consideration unless there is some incentive or suggestion in the references to do so.

The Court of Appeals for the Federal Circuit has repeatedly held that under Section 103, teachings from various references can be combined only if there is some suggestion or incentive to do so. ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F2d 1572, 221 USPQ 929 (CAFC 1984).

Stated another way:

It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps...The references themselves must provide some teaching whereby the applicant's combination would have been obvious. In re Gorman, 18 USPQ2d 1885 (CAFC 1991).

The Examiner is required to follow the law as set forth by the Federal Circuit. In summary, the combination of patents to achieve the claims of the present invention is untenable.

In the present case, there is no incentive or motivation to combine the teachings of the vehicle mounted crane shown in Schillinger et al. with a mobile communications or lighting tower. The Examiner's action does not even attempt to show a suggestion or motivation and is deficient on its face. The Examiner sets forth on page 5 of the Office Action, "as pointed out in the Office Action above, the combination of the references would enable the chassis of Wilson to have enhanced support and stability when the mast is raised, and height adjustability on the outriggers to compensate for different supporting ground levels. The enhancement ensures Wilson's chassis is able to support a raising mast on uneven support and ensures the chassis provides strong stability when raising the mast. The combination is thus desired and motivated."

As seen from the foregoing, the Examiner's action is deficient on its face in that it does not even provide reasoning to show why there would be an incentive or motivation to combine the vehicle mounted crane of Schillinger et al. with Wilson and Miller.

Claims 3 and 6 Are Not Obvious Under 35 U.S.C. §103 As
Unpatentable Over Wilson in view of Schillinger et al.

Claims 3 and 6 define the invention as a method or process and are believed non-obvious for all of the reasons set forth above.

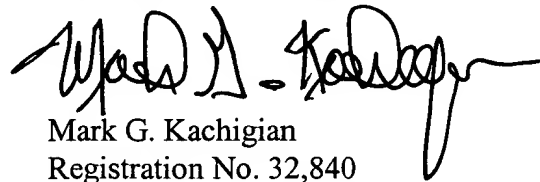
Neither of the cited references disclose or suggest the limitation of Claims 3 and 6 of attaching the upper ends of the guy wires to the erected tower and attaching the lower ends of the guy wires to the trailer and tightening the guy wires.

Accordingly, the combination of Wilson and Schillinger et al., taken together, do not reach or achieve the elements Claims 3 and 6.

For all the foregoing reasons, it is believed that the present rejection should be lifted and that the application should proceed to allowance.

Pursuant to 37 CFR §1.117(f), the \$170 fee for filing the brief is enclosed herewith. The Commissioner is hereby authorized to charge any additional fees which may be required by this paper to Deposit Account No. 08-1500. This brief is being transmitted in triplicate pursuant to the regulations.

Respectfully Submitted,



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October 18, 2004

APPENDIX

1 1. (Previously Presented) A mobile communication tower comprising:

2 a trailer comprising a chassis mounted on two or more wheels, a hitch, a plurality of
3 chassis guy wire attaching points and a plurality of leveling mechanisms wherein the chassis has a
4 plurality of outriggers pivotally mounted to said chassis, each outrigger having an outrigger guy wire
5 attaching point and a foot which can be adjusted vertically, wherein the lower end of each guy wire
6 is attached to an outrigger guy wire attaching point,

7 a telescopic tower pivotally mounted on the trailer,

8 a mechanism to raise and lower the tower,

9 a plurality of tower guy wire attaching points located on the tower, and

10 a plurality of guy wires each with an upper end attached to one of the tower guy wire
11 attaching points and a lower end attached to one of the chassis guy wire or outrigger guy wire
12 attaching points.

1 2. (Canceled)

1 3. (Previously Presented) A method for stabilizing a mobile communications tower
2 comprising the steps of:

3 leveling a trailer having a chassis mounted on two or more wheels, a hitch, and a
4 plurality of chassis guy wire attaching points;

5 moving a tower pivotally mounted to a chassis on a trailer from a horizontal to a
6 vertical position;

7 moving a plurality of outriggers pivotally mounted on said chassis from a retracted
8 to an extended position;

9 attaching upper ends of a plurality of guy wires to the erected tower, attaching the
10 lower ends of the plurality of guy wires to the chassis of the trailer and tightening the plurality of
11 guy wires.

1 4. (Previously Presented) A mobile lighting tower comprising:

2 a trailer comprising a chassis, mounted on two or more wheels, a hitch, a plurality of
3 chassis guy wire attaching points and a plurality of leveling mechanisms wherein the chassis has a
4 plurality of retractable outriggers mounted on said chassis, each outrigger having an outrigger guy
5 wire attaching point and a foot which can be adjusted vertically, wherein the lower end of each guy
6 wire is attached to an outrigger guy wire attaching point,

7 a telescopic tower pivotally mounted on the trailer,

8 a mechanism to raise and lower the tower,

9 a plurality of tower guy wire attaching points located on the tower, and

10 a plurality of guy wires each with an upper end attached to one of the tower guy wire
11 attaching points and a lower end attached to one of the chassis guy wire or outrigger guy wire
12 attaching points.

1 5. (Canceled)

1 6. (Previously Presented) A method for stabilizing a mobile lighting tower comprising
2 the steps of:
3 leveling a trailer having a chassis mounted on two or more wheels, a hitch, and a
4 plurality of chassis guy wire attaching points;
5 moving a tower pivotally mounted to a chassis on a trailer from a horizontal to a
6 vertical position;
7 moving a plurality of outriggers pivotally mounted on said chassis from a retracted
8 to an extended position; and
9 attaching upper ends of a plurality of guy wires to the erected tower, attaching the
10 lower ends of the plurality of guy wires to the chassis of the trailer and tightening the plurality of
11 guy wires.

1 7. (Previously Presented) A mobile communication tower as set forth in Claim 1
2 wherein said pivotally mounted outriggers swing radially.

1 8. (Previously Presented) A mobile communication tower as set forth in Claim 1
2 wherein said outriggers pivotally mounted to said chassis pivotally move about an axis parallel to
3 said tower.

4 9. (Previously Presented) A mobile lighting tower as set forth in Claim 4 wherein said
5 outriggers swing radially.

1 10. (Previously Presented) A mobile lighting tower as set forth in Claim 4 wherein said
2 outriggers pivotally move about an axis parallel to said tower.